

canning and processing peach insurance in the county.

b. *Average yield* means the yield established from your production records, which is approved by us and shown on our form.

c. *Contiguous land* means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

e. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and designated by the calendar year in which the peaches are normally harvested.

f. *Direct Mediterranean Fruit Fly damage* means the actual physical damage to the peaches on the unit which causes such peaches to be unmarketable and will not include unmarketability of such peaches as a direct result of a quarantine, boycott, or refusal to accept the peaches by any entity without regard to actual physical damage to such peaches.

g. *Harvest* means picking of the peaches from the trees either by hand or machine for the purpose of removal from the orchard.

h. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

i. *Insured* means the person who submitted the application accepted by us.

j. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. *Tenant* means a person who rents land from another person for a share of the proceeds therefrom.

m. *Unit* means all insurable acreage of peaches in the county located on contiguous land on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, fixed commodity payment, or any consideration other than a share in the peaches on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when

adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

#### 18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

#### 19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

#### 20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[51 FR 5697, Feb. 18, 1986, as amended at 51 FR 29205, 29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 41692, Oct. 30, 1987; 53 FR 46850, Nov. 21, 1988; 55 FR 35888, Sept. 4, 1990]

### PARTS 452-453 [RESERVED]

## PART 454—FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS FOR THE 1987 THROUGH 1997 CROP YEARS

#### Sec.

454.1 Availability of guaranteed plan of fresh market tomato crop insurance.

454.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

454.3 OMB control numbers.

454.4 Creditors.

454.5 Good faith reliance on misrepresentation.

454.6 The contract.

454.7 The application and policy.

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AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 52 FR 4593, Feb. 13, 1987, unless otherwise noted.

### **§ 454.1 Availability of guaranteed plan of fresh market tomato crop insurance.**

Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums. An insured whose contract with the Corporation, or with a Company reinsured by the Corporation under the Act, has been terminated be-

cause of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the other applications or contracts.

### **§ 454.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.**

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for fresh market tomatoes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

### **§ 454.3 OMB control numbers.**

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

### **§ 454.4 Creditors.**

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

### **§ 454.5 Good faith reliance on misrepresentation.**

Notwithstanding any other provision of the fresh market tomato insurance contract, whenever:

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(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

#### § 454.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh market tomato crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

#### § 454.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the fresh market tomato crop as landlord, owner-oper-

ator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a fresh market tomato contract issued under such prior regulations, without the filing of a new application.

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations for the 1987 through 1997 crop years are as follows:

#### DEPARTMENT OF AGRICULTURE

#### FEDERAL CROP INSURANCE CORPORATION

#### *Guaranteed Production Plan of Fresh Market— Tomato Crop Insurance Policy*

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

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### TERMS AND CONDITIONS

#### 1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption; or
- (6) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(5).

b. We will not insure against any loss of production due to:

- (1) Damage that occurs or becomes evident after the tomatoes have been harvested;
- (2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;
- (3) The failure to follow recognized good tomato irrigation practices;
- (4) The failure or breakdown of irrigation equipment or facilities;
- (5) The failure to follow recognized good tomato farming practices;
- (6) The impoundment of water by any governmental, public, or private dam or reservoir project;
- (7) Disease or insect infestation; or
- (8) Any cause not specified in subsection 1.a. as an insured loss.

#### 2. Crop, Acreage, and Share Insured

a. The crop insured will be transplanted tomatoes (excluding cherry-type tomatoes) planted for harvest as fresh market tomatoes, grown on insurable acreage, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be tomatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tomatoes at the time of planting. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share on the earlier of:

- (1) The time of loss; or
  - (2) The beginning of harvest.
- d. We do not insure any acreage of tomatoes grown by any person if the person had not previously:
- (1) Grown fresh market tomatoes for commercial sales; or

- (2) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.

e. We do not insure any acreage:

- (1) Of tomatoes grown for direct consumer marketing;
- (2) If the farming practices carried out are not in accordance with farming practices for which premium rates have been established;
- (3) Except in Pennsylvania, on which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years and the soil was not fumigated or nematicide was not applied before planting tomatoes;
- (4) Which is destroyed, it is practical to replant to tomatoes, and such acreage is not replanted (the unavailability of plants is not a valid reason for failure to replant);
- (5) Initially planted before or after the planting period set by the actuarial table;
- (6) Of volunteer tomatoes;
- (7) Planted to a type or variety of tomatoes not established as adapted to the area or excluded by the actuarial table;
- (8) Planted for experimental purposes;
- (9) Planted with another crop; or
- (10) Of tomatoes not subject to an agreement between the producer and the packer to pack the production (excluding insureds with their own packing facilities). Such agreement must be executed before reporting acreage.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

#### 3. Report of Acreage, Share, and Practice

You must report on our form:

- a. All the acreage of tomatoes in the county in which you have a share;
- b. The practice, including the row width; and
- c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tomato plantings in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the acreage reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

#### 4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The final stage production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

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b. The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantee. The stages and production guarantees are:

(1) First Stage is from planting until qualifying for stage 2, the production guarantee is 50% of the final stage production guarantee.

(2) Second Stage is from the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3, the production guarantee is 75% of the final stage production guarantee.

(3) Third Stage is from 60 days after planting until qualifying for stage 4, the production guarantee is 90% of the final stage production guarantee.

(4) Fourth Stage (Final Stage) is from the earlier of 75 days after planting or the beginning of harvest, the production guarantee is the final stage guarantee.

c. Any acreage of tomatoes damaged to the extent that growers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though the tomatoes continue to be cared for. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

d. Coverage level 2 will apply if you do not elect a coverage level.

e. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

f. You must report production to us for the prior crop year before the sales closing date as established by the actuarial table. If you do not provide the required production report, we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the insured crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your guarantee for the prior crop year. If you have filed a claim for the prior crop year, the yield determined in adjusting your indemnity claim will be considered your production report.

### 5. Annual Premium

The annual premium amount is computed by multiplying the final stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment factor for which you may qualify as contained in the actuarial table because you did not select optional units.

### 6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you,

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or from a replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agencies.

### 7. Insurance Period

Insurance (on a per acre basis) attaches when the tomatoes are planted and ends at the earliest of:

- a. Total destruction of the tomatoes;
- b. Discontinuance of harvest;
- c. The date harvest should have started on any acreage which was not harvested;
- d. 120 days after the date of transplanting or replanting;
- e. Completion of harvest;
- f. Final adjustment of a loss; or
- g. November 20 of the crop year in California and September 20 in all other states.

### 8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant tomatoes damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest begins, the tomatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tomatoes and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the tomatoes on the unit;

(b) Discontinuance of harvest of any acreage on the unit;

(c) The date harvest would normally start if any acreage on the unit is not to be harvested;

(d) 120 days after transplanting or replanting of the tomatoes; or

(e) November 20 of the crop year in California and September 20 in all other states.

b. You may not destroy or replant any of the tomatoes on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the tomatoes which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

#### 9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

- (1) Total destruction of the tomatoes on the unit;
- (2) Discontinuance of harvesting on the unit; or
- (3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

- (1) Establish the total production of tomatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and
- (2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

- (1) Multiplying the insured acreage by the production guarantee for the applicable stage;
- (2) Subtracting therefrom the total production of tomatoes to be counted (see subsection 9.e.);
- (3) Multiplying the remainder by the price election; and
- (4) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in 25-pound carton equivalents) to be counted for a unit will include all harvested and appraised production.

(1) All tomato production marketed, and any harvested unmarketed production meeting the standards for grading 85% or better U.S. No. 1 with classification size of 6 x 7 (2<sup>3</sup>/<sub>32</sub> inch minimum diameter) or larger will be considered production to count.

(2) Appraised production to be counted will include:

- (a) Unharvested production of mature green and ripe tomatoes with classification size of 6 x 7 (2<sup>3</sup>/<sub>32</sub> inch minimum diameter) or larger remaining after the final harvest;
- (b) Potential production on unharvested acreage and potential production on acreage when final harvest has not been completed;
- (c) Potential production lost due to uninsured causes; and
- (d) Not less than the guarantee for any acreage abandoned or put to another use

without prior written consent or which is damaged solely by an uninsured cause.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

- (a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;
- (b) Further damaged by an insured cause and reappraised by us; or
- (c) Harvested.

(4) The amount of production of any unharvested tomatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the tomatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured tomatoes replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage as determined on the final planting date. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand.

(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed 70 cartons multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest on the net indemnity ultimately found to be due to you, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign,

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date, and submit to us the properly completed claim-for-indemnity form. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tomatoes are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

### 10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

### 11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

### 12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

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### 13. Subrogation (Recovery of Loss From a Third Party)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

### 14. Records and Access to Farm

You must keep, for three years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tomatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

### 15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California, Florida, Georgia, and South Carolina.	February 15.
All other states .....	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved,

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the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for three consecutive years.

### 16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for counties with a February 15 cancellation date, and by December 31 preceding the cancellation date for counties with an April 15 cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

### 17. Meaning of Terms

For the purposes of tomato crop insurance:

a. *Acre* means 43,560 square feet of land on which row widths do not exceed 6 feet or if row widths exceed 6 feet, the land area on which at least 7,260 linear feet of rows are planted.

b. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding fresh market tomato insurance in the county.

c. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. *Crop year* means the period within which the tomatoes are normally grown and is designated by the calendar year in which the tomatoes are normally harvested.

e. *Harvest* means the picking of marketable tomatoes on the unit.

f. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

g. *Insured* means the person who submitted the application accepted by us.

h. *Mature green tomato* means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well formed jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

i. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

j. *Planting* means transplanting the tomato plants into the field.

k. *Plant stand* means the number of live plants per acre before the plants were damaged due to insurable causes.

l. *Potential production* means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 6 x 7 ( $2\frac{3}{32}$  inch minimum diameter) or larger which the tomato plants would produce or would have produced, per acre, by the end of the insurance period.

m. *Replanting* means performing the cultural practices necessary to replant insured acreage to tomatoes.

n. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

o. *Tenant* means a person who rents land from another person for a share of the tomatoes or a share of the proceeds therefrom.

p. *Tomatoes grown for direct consumer marketing* means tomatoes grown for the purpose of selling directly to the consumer.

q. *Unit* means all insurable acreage of tomatoes in the county on the date of planting for the crop year:

(1) In which you have 100 percent share; or

(2) Which is owned by one person and operated by another person on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

### 18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to



affect the construction or meaning of any of the provisions of the contract.

#### 19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400—Subpart J).

#### 20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[52 FR 4593, Feb. 13, 1987, as amended at 53 FR 46850, Nov. 21, 1988; 54 FR 48077, Nov. 21, 1989; 55 FR 35888, Sept. 4, 1990; 62 FR 23631, May 1, 1997; 62 FR 63633, Dec. 2, 1997]

### **PART 455—MACADAMIA NUT CROP INSURANCE REGULATIONS FOR THE 1988 THROUGH THE 1997 CROP YEARS**

#### Sec.

455.1 Availability of macadamia nut crop insurance.

455.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

455.3 OMB control numbers.

455.4 Creditors.

455.5 Good faith reliance on misrepresentation.

455.6 The contract.

455.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506(1), 1506(p).

SOURCE: 53 FR 6569, Mar. 2, 1988, unless otherwise noted.

#### **§ 455.1 Availability of macadamia nut crop insurance.**

(a) Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended, (the Act). The counties shall be designated by the

Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation (hereinafter “Reinsured companies”) offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a Reinsured company. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(b) An insured whose contract with the Corporation or with a Reinsured company under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a Reinsured company unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing,